

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

March 11, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

DENIAL OF REQUEST FOR A CONTESTED CASE
HEARINGS BY MARK MEYER

The petitioner, Mark Meyer, requested a contested case hearing concerning amendments to the Hawaii Administrative Rules as they pertain to mooring fees in the State small boat harbor facilities. We request that the Board deny the request of the petitioner for a contested case hearing.

BACKGROUND

On December 11, 2009, the Division of Boating and Ocean Recreation (DOBOR) brought a request to the Board for final approval of amendments to DOBOR's rules relating to mooring fees at DOBOR facilities. Subsequent to the meeting, the petitioner submitted a written petition for a contested case hearing on December 28, 2009, seven days past the deadline.

Rulemaking is essentially legislative in nature, not only because it operates in the future, but also because it is concerned largely with considerations of policy. Adjudication, conversely, is concerned with the determination of past and present rights and liabilities. Shoreline Transportation, Inc. v. Robert's Tours and Transportation, 70 Haw. 585, 591, 779 P. 2d 868, 872 (1989) (citation omitted).

In Herrick, 82 Haw. At 345, 922 p.2d at 958, the Hawaii Supreme Court concluded that the court's amendment of a rule relating to court reporters did not deprive the appellants of procedural due process because the amendment "constituted quasi-legislative rulemaking, rather than adjudication of the rights of specific court reporters," and "any additional procedures such as individual contested case hearings were unnecessary and would have imposed unjustifiable fiscal and administrative burdens on the state."

In the instant situation, at the public meeting held on December 11, 2009, the Land Board adopted an amendment to Hawaii Administrative Rule, Section 13-234-3, that affects members of the general public holding mooring permits for the state small boat harbors. At this meeting, there was no determination of past or present rights or liabilities of specific individuals or entities.

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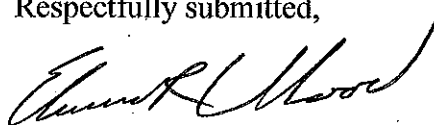
Because the Petitioner has no right to a contested case hearing on the rule amendment, he has no standing to demand a contested case hearing.

Based on the above, DOBOR asserts that the petitioner is not entitled to a contested case hearing arising out of a rule making proceeding.

RECOMMENDATION


That the Board deny the petition for a contested case hearing filed by Mark Meyer based on lack of standing.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen
Chairperson